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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:) BK-S-06-10725-LBR
USA COMMERCIAL MORTGAGE COMPANY) Chapter 11
Debtor)

In re:) BK-S-06-10726-LBR
USA CAPITAL REALTY ADVISORS, LLC,) Chapter 11
Debtor)

In re:) BK-S-06-10727-LBR
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,) Chapter 11
Debtor)

In re:) BK-S-06-10728-LBR
USA CAPITAL FIRST TRUST DEED FUND, LLC,) Chapter 11
Debtor.)

In re:) BK-S-06-10729-LBR
USA SECURITIES, LLC,) Chapter 11
Debtor.)

Affects)
☐ All Debtors)
☐ USA Commercial Mortgage Co.) Date: March 15, 2007
☐ USA Securities, LLC) Time: 9:30 a.m.
☐ USA Capital Realty Advisors, LLC)
☐ USA Capital Diversified Trust Deed)
☒ USA Capital First Trust Deed Fund, LLC)

**REPLY BY THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS OF
USA CAPITAL FIRST TRUST DEED FUND, LLC IN SUPPORT OF ITS OMNIBUS
OBJECTION TO CLAIMS SUPERSEDED BY COMPROMISE CONTAINED IN
DEBTORS' THIRD AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION
(AS MODIFIED) (AFFECTS DEBTOR USA CAPITAL FIRST TRUST DEED FUND,
LLC)**

1 The Official Committee of Equity Security Holders of USA Capital First Trust
2 Deed Fund, LLC (the "FTDF Committee") appointed in the above-captioned bankruptcy cases
3 (the "Chapter 11 Cases"), hereby submits this reply in support of its omnibus objection to
4 claims superseded by compromise contained in Debtors' Third Amended Joint Chapter 11 Plan
5 Of Reorganization (As Modified) (the "Reply").

6 This Reply is made pursuant to L.R. 3007 and is based upon the points and
7 authorities which follow, the pleadings, papers or other matters contained in the Court's file,
8 and any oral argument of counsel to be presented at the time of the hearing on this Objection.

9 DATED this 7th day of March, 2007.

10 SHEA & CARLYON, LTD.

11 
12

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POINTS AND AUTHORITIES

I.

BACKGROUND

1
2
3
4 1. On April 13, 2006 (the "Petition Date"), USA Commercial Mortgage Company
5 ("USACM"), USA Securities, LLC ("USA Securities"), USA Capital Realty Advisors, LLC
6 ("USA Realty"), the DTDF, and the FTDF (collectively with USA Mortgage, USA Securities,
7 USA Realty, and DTDF, the "Debtors") filed voluntary petitions for relief under chapter 11 the
8 Bankruptcy Code.

9 2. On May 10, 2006, the Office of the United States Trustee (the "U.S. Trustee")
10 appointed four separate committees in these Chapter 11 Cases, including the FTDF Committee.

11 3. The FTDF Committee represents the interests of those persons who invested in
12 the FTDF (the "FTDF Members"). FTDF Members hold equity, or membership, interests in
13 the FTDF.

14 4. At the behest of the Debtors, the FTDF Committee has taken upon itself the
15 analysis the nearly 150 proofs of claim filed in the FTDF case (the "FTDF Claims"). Many of
16 the proofs of claim turned out to be duplicates. Many turned out to have been mistakenly filed
17 in the FTDF case by parties who are not FTDF members. Many have been filed as a
18 "reaffirmation" of an FTDF member's equity security interest. In order to determine the
19 allowability and legitimacy of the FTDF Claims in the most efficient and cost-effective
20 manner, the FTDF Committee has filed a total of 8 omnibus claims objections (the "Omnibus
21 Claims Objections"). The Omnibus Claims Objections were filed for the purpose of resolving
22 claims of a similar nature in one fell swoop, as oppose to incurring the expense of filing a
23 separate objection to each claim.

24 5. On December 26, 2007, the FTDF Committee filed its Omnibus Objection to
25 Claims Superseded by Compromise Contained in Debtors' Third Amended Joint Chapter 11
26 Plan of Reorganization (As Modified) (the "Objection"; DE #2285).

27 6. The hearing on the Objection was set for the January 31, 2007 Omnibus
28 Hearing Date.

7. In its Objection, the FTDF Committee objected to 6 separate claims (the "Compromised Claims"), including claims filed by: (1) Kantor Nephrology Consultants, Ltd. 401(k) PSP, Gary Kantor, Trustee (claim #123); (2) Dr. Gary Kantor (claim #124); and (3) Lynn M. Kantor (claim #125) (collectively, the "Kantor Claims," filed by the "Kantor Claimants").

8. The Compromised Claims all involved claims by members of DTDF relating to the misconduct on the part of DTDF's manager and its principals, and alleging that funds diverted from DTDF may have found their way to one or more of the other Debtors.

9. The FTDF Committee's Objection was based upon the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization (as Modified) (the "Plan"), which included a settlement of all claims that DTDF may have had against FTDF in exchange for certain monetary commitments on the part of FTDF.

10. Approximately one week before the hearing on the Objection, the FTDF Committee agreed to execute a stipulation with the Kantor Claimants continuing the hearing on the Objection as to the Kantor Claimants to March 1, 2007. A Stipulation and Order to that effect was entered on January 25, 2007 (DE #2559).

11. On January 31, 2007, the Court sustained the FTDF Committee's objection as to balance of the Compromised Claims, other than the Kantor Claims.

12. On February 20, 2007, the Kantor Claimants filed their response to the Objection (the "Response"; DE #2841), to which they attached as a sample one of their three identical claims ("Claim #124").¹

13. In the Response, the Kantor Claimants seek to somehow distinguish their claims from the other Compromised Claims, and, on that basis alone, seek to overcome the FTDF Committee's Objection to their claims. As will be discussed at length below, the Kantor Claims are subject to the compromise reached in the Plan. In addition, the FTDF Committee

¹ On February 21, 2007, the FTDF Committee and the Kantor Claimants agreed to continue the hearing on the Objection as to the Kantor Claimants to March 15, 2007, and to extend the FTDF Committee's time in which to file a reply in support of the Objection to March 8, 2007. A Stipulation and Order to that effect was entered on February 26, 2007 (DE #2891).

1 has taken the opportunity to point out several other infirmities in the Kantor Claims, including
 2 the absence of any evidentiary support as well as the absence of any factual or legal basis.
 3 These infirmities are such as would deny the Kantor Claims prima facie validity in the first
 4 instance; they are fatal in light of the FTDF Committee's Objection.

5 14. For these reasons, as discussed more fully below, the FTDF respectfully
 6 requests that the Kantor Claims be disallowed in their entirety.

7 II.

8 LEGAL AUTHORITY

9 A. The Kantor Claims Lack both a Factual and Legal Basis

10 Bankruptcy Code section 502 authorizes any party in interest to object to a claim. See
 11 11 U.S.C. § 502(a). Although a properly and timely filed proof of claim is presumed to be
 12 valid under Bankruptcy Rule 3001(f), once an objection controverts this presumption, the
 13 creditor has the ultimate burden of persuasion as to the validity and amount of the claim.
 14 Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.), 178 B.R. 222,
 15 226 (B.A.P. 9th Cir. 1995), aff'd, 91 F.3d 151 (9th Cir. 1996) (quoting In re Allegheny
 16 International, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992)).

17 Moreover, Local Rule 9014(d)(1) provides that "[a]n opposition must be supported by
 18 affidavits or declarations that conform to the provisions of subsection (c) of this rule."

19 In this case, the FTDF Committee's Objection to the Kantor Claims appears to have
 20 been overly generous, in that it assumed that the Kantor Claims were based, in substance, upon
 21 the argument for recharacterization that has been developed throughout the course of the USA
 22 cases involving FTDF, DTDF, and the Direct Lenders. The FTDF Committee's Objection
 23 pointed out that such claims, though perhaps based upon legitimate grounds, have been
 24 superseded by the compromise entered into between FTDF and DTDF in the Debtors' Third
 25 Amended Joint Chapter 11 Plan of Reorganization expressly resolving those issues.

26 However, in their Response, the Kantor Claimants now expressly disclaim basing their
 27 claims upon such position. Instead, the Kantor Claimants have clarified that they somehow
 28 assert direct claims against FTDF based upon a purported conspiracy between the five Debtors,

1 whom the Kantor Claimants have whimsically dubbed the “Debtor Conspirators”. Claim #124,
 2 at ¶ 19.

3 In support of its conclusion that the five Debtors were conspirators, the Kantor
 4 Claimants point merely to their assertion that the five Debtors had common employees,
 5 premises, and investments. Id.

6 Having thus concluded that the Debtors were all co-conspirators, the Kantor Claimants
 7 then discuss various purported representations made to them by the Debtors’ principals,
 8 Thomas A. Hantges (“Hantges”), Joseph D. Milanowski (“Milanowski”), and Paul S. Hamilton
 9 (“Hamilton”), as well as representations made by Phillip Dickinson (“Dickinson”), an
 10 employee of “one or more of the Debtor Conspirators,” in connection with *the Kantor*
 11 *Claimants’ investment in DTDF*. Id. at ¶¶ 20-29

12 Following the definition of “Debtor Conspirators,” the Kantor Claimants make *no*
 13 *allegation whatsoever* of any act or omission specifically performed by FTDF. Nor have the
 14 Kantor Claimants made any allegations that they are members of FTDF, or that they have ever
 15 held an interest in FTDF. Indeed, as the Declaration of Matt Kvarda in support of the FTDF
 16 Committee’s Objection [DE #2480] (the “Kvarda Declaration”) expressly stated, the Kantor
 17 Claims are based upon investments made in DTDF, not in FTDF. Kvarda Declaration, ¶ 7.

18 As the Ninth Circuit Court of Appeals has recently had occasion to point out, “...Rule
 19 9(b) does not allow a complaint to merely lump multiple defendants together but ‘require[s]
 20 plaintiffs to differentiate their allegations when suing more than one defendant...and inform
 21 each defendant separately of the allegations surrounding his alleged participation in the
 22 fraud.’” Swartz v. KPMG, LLP, __ F.3d __, 2007 WL 438795, 7 (9th Cir. 2007) (finding that
 23 the plaintiff’s complaint for conspiracy to commit fraud “patently failed to comply with Rule
 24 9(b),” noting that “[t]he complaint is shot through with allegations that the ‘defendants’
 25 engaged in fraudulent conduct but attributes specific misconduct only to [certain of the
 26 defendants],” and ultimately finding that “[c]onclusory allegations that [two of the named
 27 defendants] ‘knew that [the other defendants] were making false statements...and thus were
 28 acting in concert’...and ‘were active participants in the conspiracy’ without any stated factual

1 basis are insufficient as a matter of law”).

2 In this case, the allegations that the Kantor Claimants have made with respect to FTDF
3 do not even rise to the level of detail deemed insufficient in Swartz, having failed to allege
4 even a general act or omission on the part of FTDF.

5 Significantly, the one Debtor in which the Kantor Claimants *have* invested, DTDF, is
6 the single Debtor *against whom the Kantor Claimants have not filed a claim!* Given the nature
7 of the Kantor Claims, this omission is astounding since all of the representations alleged by the
8 Kantor Claimants to have been made by Hantges, Milanowski, Hamilton or Dickinson were
9 necessarily made in their capacity as the principals and the employees of DTDF to the Kantor
10 Claimants in their capacity as actual or potential investors in DTDF.

11 The bizarre nature of the Kantor Claims is made all the more significant by the
12 complete and total absence of any supporting evidence. The Kantor Claims rest solely upon
13 such generalized and unsubstantiated allegations as “[a]ll of the Debtor Conspirators benefited
14 from their joint conduct” (Id. at ¶30), or “Milanowski, Hantges, Hamilton, and Dickinson,
15 acting on behalf of the Debtor Conspirators and others, acted with the intention to deceive and
16 mislead [the Kantor Claimants].”

17 Moreover, it is with full knowledge of the absence of any evidence that the Kantor
18 Claimants have stated in their Response that “[i]n the Objection, the Committee has not
19 objected to the substance of the Kantor Claims. Therefore, the Kantors assert that the Court
20 must accept as true all of the allegations contained in the Kantor Claims.”²

21 Unlike a complaint such as the one involved in Swartz, which is a notice pleading and
22 does not require evidentiary support in order to be deemed sufficient, a proof of claim requires
23 *proof* of the claim. See, e.g., In re Hongisto, 293 B.R. 45, 50-51 (Bankr. N.D. Cal. 2003)
24 (allegations in state court complaint appended to creditor's proof of claim that debtor was one
25

26 ² In addition to this allegation, the Kantor Claimants alleged, in Footnote 5 of the Response,
27 that the FTDF Committee did not reserve rights to object to the Kantor Claims on other
28 grounds then as set forth in the Objection. To the contrary, the FTDF Committee
unequivocally reserved its rights to object to the Kantor Claims on all other grounds, which
would include an objection on "the substance" of the Kantor Claims, at a later date if
necessary. Objection, p.2, ll. 18-20; p. 8, ll. 10-12.

1 of people contacted about joining conspiracy to have creditor arrested, were insufficient to
 2 state basis for imposing legal liability on debtor for creditor's arrest; accordingly, proof of
 3 claim did not constitute prima facie evidence of creditor's claim, and initial burden of proof
 4 was properly placed on creditor in contested matter arising out of debtor's objection to proof of
 5 claim).

6 It is apparent that the only reason that the Kantor Claimants filed the Kantor Claims in
 7 the FTDF case is because, unlike the DTDF, the FTDF sold its assets in its chapter 11 case and
 8 has funds to distribute to the FTDF members. While the Kantor Claimants may wish they had
 9 invested in FTDF rather than the DTDF, they did not do so, and cannot now grab assets from
 10 the FTDF members solely based on its "buyer's remorse."

11 **B. Even Assuming the Truth of the Allegations Asserted in the Kantor Claims,**
 12 **the Kantor Claims have been Superseded by the Compromise Reached in the**
 13 **Debtors' Third Amended Joint Chapter 11 Plan of Reorganization**

14 The Kantor Claims have been filed on account of losses allegedly suffered by the
 15 Kantor Claimants due to their investment in DTDF. However, as the Kantor Claimants have
 16 correctly pointed out, Section VIII(A)(2) of the Plan expressly provides that:

17 As of the Effective Date, in consideration for the obligations,
 18 subordination, modifications of rights and accommodations of the
 19 FTDF..., DTDF, the DTDF Estate, and Post-Effective Date DTDF,
 20 on their own behalf, shall be deemed to forever release, waive and
 21 discharge any and all Claims...based upon, arising out of, relating
 22 to, by reason of, or in connection with, in whole or in part, any act
 23 or omission, ...fact or matter from the beginning of time to the
 24 Effective Date, including, without limitation, in any way relating to
 25 FTDF, the FTDF Estate, the FTDF Chapter 11 Case, including any
 26 recharacterization, or substantive consolidation causes of action, or
 27 any other matter which DTDF, the DTDF Estate, or Post-Effective
 28 Date DTDF or any Person or Entity claiming by, from, through, or
 under any of DTDF, the DTDF Estate, or Post-Effective Date
 DTDF ever had, now has, or hereafter can, shall, or may have
 against FTDF or the FTDF Estate.

26 This compromise was reached in order to resolve the "recharacterization" argument that
 27 had been looming over the USA cases since the petition date. The recharacterization argument
 28 took the position that, due to the commingling of funds in the trust accounts, the Debtors'

1 common principals, and the scandalous treatment of DTDF's investment funds, all of the
 2 Debtors' collective assets should be recharacterized and/or substantively consolidated and
 3 distributed pro rata among all creditors.

4 This recharacterization argument was effectively settled by the above compromise in
 5 the Plan, which was reached in order to achieve finality and closure as to these issues.
 6 Importantly, *each of the Kantor Claimants voted in favor of the Plan*. The Kantor Claimants
 7 are now attempting to thwart the clear import of the compromise reached in the Plan, and, on
 8 the sole basis of FTDF and DTDF's shared insiders, to assert claims of "fraud, conspiracy, and
 9 consumer fraud" against FTDF.
 10

11 Since the Kantor Claimants possess no standing to assert direct claims against DTDF
 12 based upon the mismanagement of DTDF funds, it is a complete wonder how the Kantor
 13 Claimants could leap frog debtors and estates and hold any claim against FTDF. In Federal
 14 Land Bank of Spokane v. Stiles, 700 F. Supp. 1060, 1066 (D. Mont. 1988), the court noted
 15 that:
 16

17 Ordinarily, a shareholder may not bring a direct action for recovery
 18 of diminished stock value. Lewis v. Chiles, 719 F.2d 1044, 1049
 19 (9th Cir. 1983). Applying Montana law, the Ninth Circuit recently
 20 held that "[a] direct action can be brought either when there is a
 21 special duty, between the wrongdoer and the shareholder, or when
 22 the shareholder suffers injury separate and distinct from that
 23 suffered by other shareholders." Sax v. World Wide Press, Inc.,
 24 809 F.2d 610, 614 (9th Cir. 1987). A shareholder can enforce a
 25 corporate right in a derivative action if certain conditions are met.
 26 Id. at 613; Mont. R. Civ. P. 23.1. Stiles clearly do not seek to
 27 bring their cross-claim as a derivative action; therefore, the court
 28 inquires whether they can bring a direct action. The court finds that
 they cannot. As in *Sax*, Stiles *have not identified [as shareholders]*
a fiduciary duty owed to [them] that is separate and distinct from
that owed to other shareholders and that would allow [them] to
maintain a direct action. The injury [they] allege [] affected the
"whole body of [PCA] stock" and is, therefore, an injury to the
corporation.

(Emphasis added). As in Stiles, the injury that the Kantor Claimants have alleged is not

1 separate and distinct from the injury to the other equity holders of DTDF, and is thus regarded
 2 as an injury to DTDF itself. Nevada law similarly provides that misconduct that causes harm
 3 to the entire corporation as opposed to an individual shareholder can only be challenged via a
 4 derivative action. See e.g. Nev. R. Civ. P. 23.1; Cohen v. Mirage Resorts, Inc., 119 Nev. 1, 19,
 5 62 P.3d 720, 732 (2003). The legal authority cited by the Kantor Claimants only provides
 6 further support for this principal. Thus, for example, in In re Western World Funding, Inc., 52
 7 B.R. 743, 774-75 (Bankr. D. Nev. 1985), cited by the Kantor Claimants in their Response, the
 8 court explained:

10 The distinction between personal creditor claims against corporate
 11 officers and claims which creditors may assert on behalf of the
 12 corporation has been described thus:

13 The dividing line is whether the cause of action is *one which is*
 14 *purely personal, in which no other claimant or creditor of the*
 15 *corporation has an interest*, or whether the cause of action is *one*
 16 *in favor of creditors in general*, which may be availed by "any"
 17 one creditor either suing alone (as it is sometime held he may) or
 18 as a representative of all the creditors. *In the one case the only*
 19 *liability is to the particular person injured, who may or may not be*
 20 *a creditor of the corporation, as in the case of an action for deceit,*
 21 *while in the other case the liability is to all creditors of the*
 22 *corporation without regard as to any personal dealings between*
 23 *such officers and such creditors.* 3A *Fletcher* § 1134 at 202. This
 24 distinction parallels that between a personal shareholder suit, and a
 25 derivative suit. See e.g. Sutter v. General Petroleum Corp., 28 Cal.
 26 2d 525, 170 P. 2d 898, 901 (1946). While the trustee may not bring
 27 personal shareholder actions, he may certainly bring those actions
 28 for which *the injury to the shareholders is derived from the harm*
to the corporation. Schmitt v. Jacobson, 294 F.Supp. 346
 (D.Mass.1968).

24 (Emphasis added). As the case law makes abundantly clear, the question is not whether a
 25 shareholder suffered an injury. The question is whether the shareholder suffered a
 26 *particularized* injury that is *distinct from the injury suffered by other shareholders*. Thus, the
 27 Kantor Claimants' efforts to characterize their claims as "direct claims" are unavailing against
 28 the DTDF and clearly against the FTDF. Indeed, just be saying that their claims are "direct,"

1 does not make them so. They have suffered an injury (the impairment of their investment in
 2 DTDF), which is identical to that suffered by their fellow DTDF members, since it is
 3 ultimately an injury to DTDF. The Kantor Claimants do not have standing to seek damages for
 4 an injury caused to DTDF without bringing a derivative action.

5
 6 **C. The Kantor Claims Are Precluded by 11 U.S.C. § 510(b)**

7 The Bankruptcy Code establishes a clear priority scheme for the distribution of estate
 8 assets through a plan of reorganization. First, “a plan may place a claim or an interest in a
 9 particular class only if such claim or interest is substantially similar to the other claims or
 10 interests in such class.” 11 U.S.C. § 1122(a). Secondly, a plan must “provide the same
 11 treatment for each claim or interest of a particular class,” unless the holder of the claim agrees
 12 otherwise. 11 U.S.C. § 1123(a)(4). Finally, “[t]he absolute priority rule, distilled to its basic
 13 components, requires that senior claims be paid in full before any junior class can receive or
 14 retain any property.” In re Mortgage Inv. Co. of El Paso, Texas, 111 B.R. 604, 617 (Bankr.
 15 W.D. Tex. 1990). See also Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 201-02
 16 (1988).

17 Pursuant to this priority scheme, a claimant who holds an equity interest in a debtor
 18 may only recover from the debtor's estate if the estate's creditors are to be paid in full under the
 19 plan. Further, if there are any remaining assets after provision for payment of senior classes in
 20 full, such equity holders must recover on par with other similarly-classified equity holders, and
 21 must share with other equity holders in their class on a *pro rata* basis as determined by the
 22 allowed amount of the holder's claim.
 23

24 The Kantor Claimants have asserted claims that are common to all investors in DTDF;
 25 namely, that they were fraudulently induced by DTDF's principals to invest in DTDF, and that
 26 DTDF's principals subsequently “misappropriated...*the Diversified Fund's money*,” resulting
 27 in harm to *all* of DTDF's members, including the Kantor Claimants. Even if the Kantor
 28 Claimants had filed their claims against DTDF, their claims would be no more than an attempt

1 to circumvent this priority scheme by categorizing their claims against DTDF according to
 2 various contract and/or tort theories. By doing so, they would unfairly seek to recover on par
 3 with general secured or unsecured creditors of the DTDF estate, ahead of similarly situated
 4 equity holders, thereby depleting the pool of assets that should be available for distribution to
 5 the equity class.
 6

7 Moreover, because the Kantor Claimants' standing to assert such claims arise out of the
 8 purchase of membership interests in DTDF, such claims must be subordinated to creditor
 9 claims as well as other equity interests pursuant to the mandate of 11 U.S.C. 510(b), which
 10 provides, in pertinent part, that:

11 [A] claim arising from rescission of a purchase or sale of a security
 12 of the debtor *or of an affiliate of the debtor, for damages arising*
 13 *from the purchase or sale of such a security*, or for reimbursement
 14 or contribution allowed under section 502 on account of such a
 15 claim, *shall be subordinated to all claims and interests that are*
senior to or equal the claim or interest represented by such
security...

16 (Emphasis added). Section 510(b) prevents, at a minimum, equity interest holders from
 17 asserting claims alleging fraud or other illegality in the issuance of securities, since such claims
 18 arise from the purchase or sale of a security for purposes of § 510(b).³ Indeed, as the Ninth
 19

20
 21 ³ A limited exception to § 510(b) provides that "if such security is common stock, such claim
 22 has the same priority as *common stock*." 11 U.S.C. § 510(b) (emphasis added). Thus, unless
 23 the claim for damages arises from the purchase of a security that is common stock, such claims
 are subordinated to equity interests.

24 The Kantor Claims do not arise from the purchase of a security that is "common stock," as
 25 DTDF Members own interests in a limited liability corporation and not common stock. Thus,
 26 limited liability interests do not fall within the exception to § 510(b)'s mandatory
 27 subordination, which is explicitly carved out only for "common stock" and no other form of
 28 security. See, e.g., Security Leasing Partners, L.P., v. Proalert, LLC (In re Proalert, LLC), 314
 B.R. 436, 441 (9th Cir. B.A.P. 2004) ("[T]he plain meaning of a statute controls, except in rare
 cases where a literal interpretation produces absurd results. A court must presume that a
 legislature says in a statute what it means and means in a statute what it says there. . . . When
 the words of a statute are clear, judicial inquiry is complete.") (Internal quotations and citations
 omitted).

1 Circuit Court of Appeals recently noted in In re American Wagering, Inc., 465 F.3d 1048,
 2 1051-52 (9th Cir. 2006):

3 Section 510(b) serves to effectuate one of the general principles of
 4 corporate and bankruptcy law: that creditors are entitled to be paid
 5 ahead of shareholders in the distribution of corporate assets. The
 6 principles behind corporate and bankruptcy laws generally do not
 7 favor shifting the risk of loss from shareholders to creditors, even
 8 if the shareholders are blameless. *One of the primary purposes of*
 9 *section 510(b), therefore, is to prevent disappointed shareholders,*
 10 *sometimes the victims of corporate fraud, from recouping their*
 11 *investment in parity with unsecured creditors.* Although many
 12 subordination cases sound in fraud, the scope of section 510(b) has
 been broadened over the years to include claims based on contract
 law and other actions. The majority of courts in recent years that
 have confronted the scope of § 510(b), including this one, have
 concluded that the phrase "arising from" should be read broadly to
 encompass claims other than fraud claims, such as claims for
 breach of contract.

13 (Emphasis added). In this case, the Kantor Claimants seek to recover on equal footing with the
 14 unsecured creditors of FTDF based upon allegations of fraud in DTDF's issuance of securities.
 15 Section 510(b) precludes such claims. Similar claims asserted against DTDF itself have already
 16 been disallowed by the Court in the DTDF case.⁴ It would be absurd for the Kantor Claims,
 17 which have not even been filed against DTDF, to be allowed in any amount in the FTDF case.
 18

19 **D. The FTDF Committee's Objection Provides Adequate and Sufficient**
 20 **Grounds for the Disallowance of the Kantor Claims.**

21 As discussed above, the FTDF Committee maintains its original position that the
 22 Kantor Claims have been superseded by the compromise reached in the Plan.

23 Nonetheless, the FTDF Committee has taken the opportunity to point out several fatal
 24 flaws in the Kantor Claims that have not been remedied by the Response, such as the absence
 25 of *any* evidence in support of the claims, and the presence of only blanket conclusory
 26 allegations with respect to FTDF's involvement in a "conspiracy" – allegations that were
 27

28 ⁴ See fn. 5, below.

1 regarded as insufficient even to sustain the complaint filed in Swartz.

2 “Generally, Objections to proofs of claim need not be pleaded with great precision.” In
 3 re Mall at One Associates, L.P., 185 B.R. 1009, 1015 (Bankr. E.D. Pa. 1995). Although the
 4 court in that case was nonetheless reluctant to sustain a substantive objection to a proof of
 5 claim that had not been developed in the initial objection, this was due only to the fact that “the
 6 claimant, which bears the ultimate burden of proof on the issue of the validity of its claim, See
 7 In re Allegheny Int’l, Inc., 954 F.2d 167, 173-74 (3d Cir.1992), would not be placed on notice
 8 of what issues it must prove to sustain its claim.” Id.

10 In this case, however, the Kantor Claimants were fully on notice of their responsibility
 11 to make specific allegations of fraud against each individual Debtor; of the need to provide
 12 evidentiary support for it’s the Kantor Claims; and of the Court’s Order of the Case with
 13 respect to the application of § 510(b) to such claims brought by equity security holders.⁵

15 Therefore, the Court is respectfully requested to disallow the Kantor Claims in their
 16 entirety for the reasons set forth in the Objection as well as for any additional reasons set forth
 17 herein.

18 III.

19 CONCLUSION

20 For the reasons set forth herein, the FTDF Committee respectfully requests that the
 21 Court enter an order sustaining the FTDF Committee’s Objection, and disallowing the Kantor
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 26 ⁵ See, e.g., this Court’s Order Sustaining Omnibus Objection of Official Committee of Equity
 27 Security Holders of USA Capital Diversified Trust Deed Fund, LLC, to Claims on Equity
 28 Misfiled Against USA Capital Diversified Trust Deed Fund, LLC as Creditor Claims (DE
 #2765), entered on February 14, 2007, embodying its ruling that § 510(b) applies to all claims
 of DTDF members arising out of their purchase of securities in DTDF.

1 Claims in their entirety without prejudice to the right of the FTDF to file further objections on
2 other grounds to the Kantor Claims.

3 DATED this 7th day of March, 2007.

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